

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 30TH NOVEMBER 2007 / 9TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 180 of 1999

CRA.260/1993 of ADDL.SESIONS COURT, KOTTAYAM
CC.305/1989 of JUDL.MAGISTRATE OF FIRST CLASS-I, KANJIRAPPALLY
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REVN. PETITIONER/APPELLANT/ACCUSED:

VENUGOPAL S/O PRABHAKARAN NAIR
PULIMOOTIL KIZHAKKETHIL VEEDU
PUZHAVATHU KARA, CHANGANASSERY VILLAGE

BY ADV. SRI.T.SETHUMADHAVAN

RESPONDENT/STATE:

STATE OF KERALA
REPRESENTED BY THE PUBLIC PROSECUTOR
HIGH COURT OF KERALA

BY PUBLIC PROSECUTOR SRI.AMJITH ALI
SRI.V.BOVAN CHERIAN VARKEY

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY
HEARD ON 30/11/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

A.K.BASHEER, J.

Crl.R.P.No.180 OF 1999

Dated this the 30th day of November, 2007

ORDER

This revision petition, which is at the instance of the accused in a prosecution under Sections 409, 466 and 477(A) of the Indian Penal Code, is directed against the concurrent order of conviction and sentence passed by the trial court and the appellate court against him. Petitioner has been directed to undergo rigorous imprisonment for one year each on the above three counts. It has been further directed that the sentence will run concurrently.

2. The charge against the petitioner was that while he was working as Postal Assistant at Ponkunnam Post Office, he had, with the intention of falsification of account and to misappropriate money, received Rs.357/- from CW3 and issued a receipt on January 25, 1988 on the triplicate of which he had written Rs.800/- and issued to CW4. He was also alleged to have committed the following acts of falsification of accounts and misappropriation:

- a) he had misappropriated a sum of Rs.800/- collected from PW4 by issuing Ext.P4 receipt.
- b) He collected Rs.500/- from PW5 under Ext.P11 receipt.
- c) He collected Rs.200/- from PW8 under Ext.P19 receipt.
- d) He collected Rs.200/- from PW10 under Ext.P20 receipt and for the above purpose he fabricated the records and falsified the accounts and thus committed the offence under Sections 409, 466 and 477(A) of the Indian Penal Code.

3. The prosecution had examined PWs 1 to 10 and Exts.P1 to P30 were also marked on its side. Petitioner got himself examined as DW1 and Exts.D1 to D3 were marked on his side.

4. The trial court after an elaborate consideration of the oral and documentary evidence, found that the prosecution had succeeded in proving the charges levelled against the petitioner and accordingly he was found guilty under Sections 409, 466, 477A and was convicted and sentenced thereunder to undergo rigorous imprisonment for one year each under the three counts. Appeal preferred by the petitioner against the above order of conviction and sentence was dismissed by the Sessions court. Hence this

revision petition.

5. It is contended by learned counsel for the petitioner that the courts below had fallen in grave error by refusing to give due weight and consideration to Ext.P29 report issued by the Forensic Science Laboratory. He invites my attention to the opinion given by the Assistant Director of Documents in the report that “it has not been possible to arrive at any definite conclusion regarding the authorship of the writings marked Q1 to Q4 and the signatures occurring in Q5 and Q6 in comparison with the available standard writings and signatures marked S1 to S10 and A1 to A3”. Learned counsel further points out that the learned Magistrate had referred to Ext.P29 only in passing without advertng to the significance of the above opinion made by the Assistant Director in the report. He further contends that the Appellate court also made only a cursory reference to the above report without bothering to attach any importance to the observation made by the Assistant Director. The other contention raised by the learned counsel is that records were available in the Post Office to show that several other persons than

the petitioner were also in fact handling the relevant records during the period in question. Though the petitioner had requested for a direction to produce the above records before the court, the prosecution had purposefully refused to do so. PWs1 and 2 had in fact admitted that those records referred to by the petitioner might be available in the office. According to the learned counsel, the failure of the prosecution to produce the above records had resulted in grave prejudice to the accused.

6. Learned counsel has taken me through the relevant materials on record, particularly to Ext.P29. I have also perused the depositions of the material witnesses, namely, PWs 1 and 2. Their evidence is crucial and relevant for the purpose of the case. Though there is some force in the contention raised by the petitioner that the opinion expressed by the Assistant Director that it had not been possible to arrive at any conclusion regarding the authorship of the writings and signatures, it is pertinent to note that the evidence of PWs 1 and 2 had convincingly established that the petitioner was in charge of telephone revenue collection,

booking of telegraph, registering of telephonic address, etc. during the relevant period. Though it is vaguely contended on behalf of the petitioner that someone else was in charge of those duties on certain days, petitioner did not have a specific case with regard to this aspect of the case as is asserted now. Even while he was questioned under Section 313 of Code of Criminal Procedure, petitioner did not have such a specific case.

7. It is also significant to note that petitioner had not bothered to make a motion before the trial court for a direction to summon the relevant records which according to him would have substantiated his contention. His only plea before the trial court was that his mental condition during that period was not good and it was therefore that some omissions and commissions might have occurred.

8. The trial court and the appellate court had elaborately considered the oral and documentary evidence on record. No material illegality or irregularity apart from the one referred to above with regard to Ext.P29 had been brought to my notice. Of

course Ext.P29 does not convincingly show that the disputed hand writings were that of the petitioner. It is true that the author of Ext.P29 has expressed an opinion that it was not possible to arrive at a definite conclusion. That does not mean that the evidence of PWs1 and 2, the superior officers of the petitioner had to be brushed aside. The testimony of PWs 1 and 2 does inspire confidence. I do not find any reason either to disbelieve PWs 1 and 2 or to ignore Exts.P1 to P30 documents. The power under the revisional jurisdiction being narrow and limited, this court need not venture to reappraise the evidence. On the whole, I am satisfied that no interference is warranted with the concurrent findings entered by the trial court as well as the appellate court.

9. However, I am satisfied that in the matter of sentence, interference is warranted in this case. It is on record that petitioner had been undergoing treatment for some mental ailments. Exts.D1 to D3 would substantiate the above contention raised by the petitioner. It is also on record that he has lost his job. The amount involved was only Rs.6,200/-. He is now aged 60.

He was removed from service in the year 1989 itself. He has a family consisting of his wife and two daughters.

Having regard to the entire facts and circumstances, I am satisfied that petitioner deserves leniency. Therefore, while confirming the order of conviction passed against the petitioner under Sections 409, 466 and 477A Indian Penal Code, I am of the view that the sentence imposed on him is liable to be modified and reduced. Therefore, in lieu of the sentence of one year's rigorous imprisonment each under the three counts, petitioner shall undergo simple imprisonment for one month each under the three counts. The sentence shall run concurrently. The period, if any, undergone by the petitioner shall be set off. The revision petition is allowed in part to the above extent.

(A.K.BASHEER, JUDGE)

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A.K.BASHEER, J.

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ORDER

Dated 30th Nov. 2007